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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,183	07/12/2001	Cheryl Volkman	13012.5US01	1161
23552	7590	03/03/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			HARRIS, STEPHANIE N	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/904,183	VOLKMAN ET AL.	
	Examiner Stephanie Harris	Art Unit 3636	MHC

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 February 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13, 15-17 and 19-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 19-22 and 26-35 is/are allowed.
- 6) Claim(s) 1-13, 15-17, 25 and 36-47 is/are rejected.
- 7) Claim(s) 23, 24 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 July 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. <u>17, 18</u> .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

**DETAILED ACTION**

***Response to Amendment***

Upon further consideration, a new ground(s) of rejection is made in view of claims 19 and 20. Therefore, the previous rejection has been withdrawn. This office action is in response to Applicant's amendment filed February 13, 2004.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 7, 10-12, 25, 39-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Barth (USPN 3312437).

Regarding claim 1, Barth discloses a stool that comprises a base (3) having a front and a back corresponding to a front and back of the stool as seen in Figure 1. The base (3) is elongated from the back to the front along a longitudinal axis (See Attached Figure 5). The base has a convex bottom surface (6) that defines an upwards extending nose (8) at the front of the base as seen in Figure 4. A post (4) connects the base to a seat (1) as seen in Figure 1.

Regarding claim 2, the base further includes a stabilization region (B) as seen in Figure 2. The majority of the stabilization region is located rearward of the post (2) as seen in Figure 2. Regarding claim 3, the entire stabilization region (B) is located rearward of the post as seen in Figure 2. Regarding claim 4, the stabilization region is a flattened region as seen in Figure 2.

Regarding claim 5, the base comprises a bottom surface and a top surface as seen in Figure 4. The top surface (6) is concave and can be used as a storage compartment as seen in Figure 4. Regarding claim 6, the post is adjustable in height as seen in Figure 2.

Regarding claim 7, the base comprises a bottom surface with two opposite sides with convex curvatures (6) as seen in Figure 4. The opposite sides extend between the front end and the back end of the base as seen in Figure 4. The opposite sides extend between the front end and the back end of the base. The opposite sides converge toward a nose (7, 8) located at the front end of the base as seen in Figure 4.

Regarding claim 10, the nose (7, 8) is rounded and extends upwardly as seen in Figure 4. Regarding claim 11, the bottom surface of the base at the nose comprises a non-slip surface as seen in Figure 4. Regarding claim 12, the bottom surface of the base at the nose forms a discrete protrusion.

Regarding claim 42, the support structure is adjustable to position the seat in a raised position or a lowered position relative to the base as seen in Figure 2. Regarding claim 43, the support structure (2) is an adjustable post as seen in Figure 2.

Regarding claim 44, the base comprises a bottom surface with two opposite sides with convex curvatures. The opposite sides extend between the front end and the back end of the base. The opposite sides converge toward a nose (7, 8) located at the front end of the base as seen in Figure 4.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barth in view of Morin (USPN 4101163).

Barth has been described above. Barth discloses a contoured seat (1) as seen in Figure 1. Barth shows all of the teachings of the claimed invention but fails to show the use of handles positioned at first and second sides of the seat.

Morin discloses a handle (32) that can be used at first and second sides of the seat as seen in Figure 2. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the seat of Barth , with the handles as shown by Morin, in order to provide a convenient means for the use to carry the stool.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barth in view of Hoover et al. (USPN 1976170)

Barth has been described above. Barth shows all of the teachings of the claimed invention but fails to show the use of base with a hole. Hoover et al. discloses a base (1) that has a hole (5), which could be used to hang the base as seen in Figure 3. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the base of Barth by replacing it with the base with a hole, as shown by Hoover et al., in order to additionally provide a hand holder for the base.

Claims 15-17, 36-38, 46, and 47 rejected under 35 U.S.C. 103(a) as being unpatentable over Barth.

Regarding claims 15-17 and 36-38, Barth discloses all of the claimed structure of the instant invention. Barth lacks only the specifically recited method steps. It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the invention to use the stool of Barth by the claimed method steps. Such a modification provides a conventional and efficient method of using the device of Barth.

### ***Allowable Subject Matter***

Claims 23 and 24 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 19-22 and 26-35 are allowed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to stools: USPN 4101163.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie Harris whose telephone number is 703-305-1838. The examiner can normally be reached on Monday-Friday from 9am to 3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo, can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SNH

February 26, 2004

Stephanie Harris  
Examiner  
Art Unit 3636



Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600

April 4, 1967

O. BARTH

3,312,437

TILTED STOOL

Filed Oct. 23, 1965

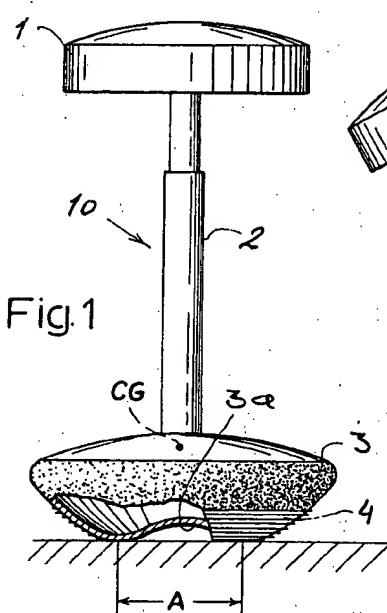


Fig.1

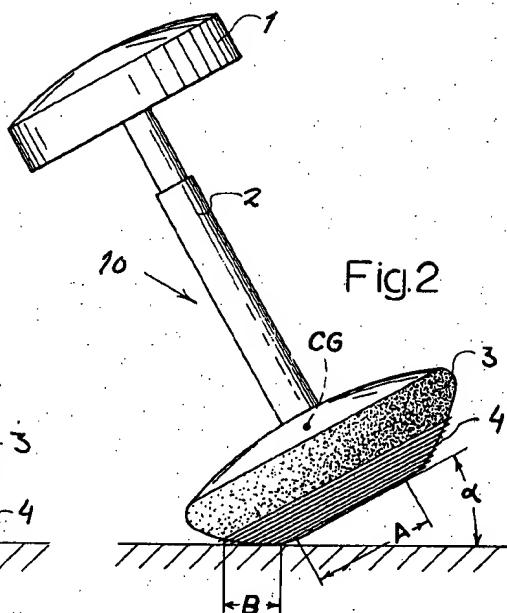


Fig.2

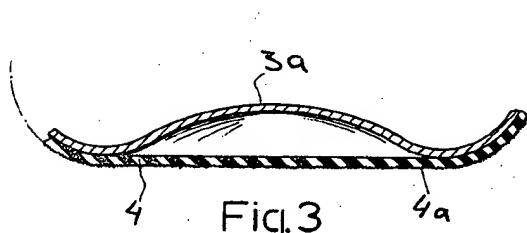


Fig.3

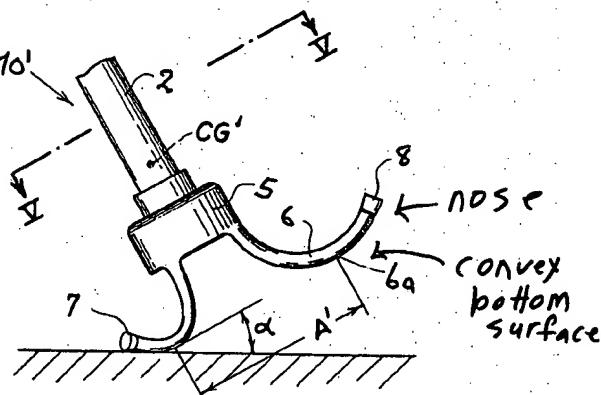


Fig.4

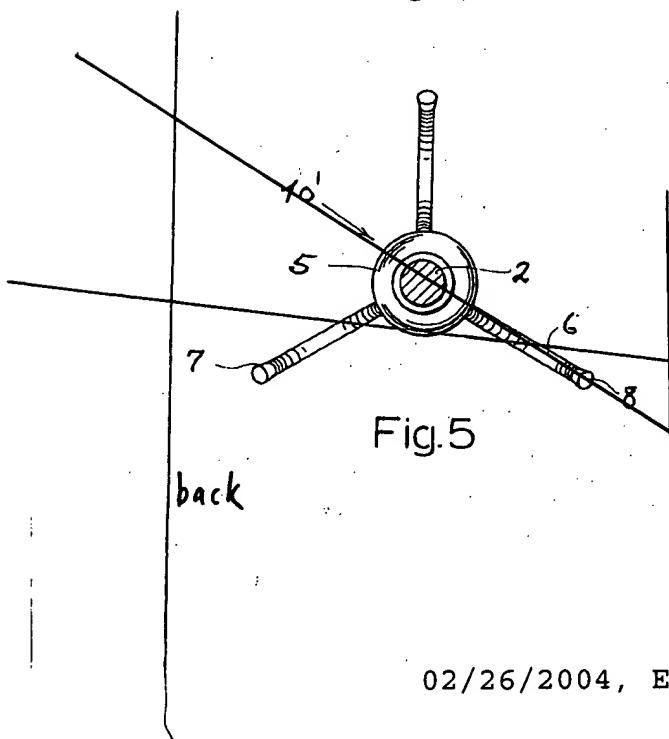


Fig.5

INVENTOR,  
OTTO BARTH, DECEASED  
BY VALERIE BARTH, LEGAL REPRESENTATIVE  
BY

Karl G. Ross  
Attorney

longitudinal  
axis